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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,356	07/21/2003	Aaron Scott Lukas	06336P USA	7682

23543 7590 06/13/2008

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PATENT DEPARTMENT
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EXAMINER	
PADGETT, MARIANNE L	

ART UNIT	PAPER NUMBER
1792	

MAIL DATE	DELIVERY MODE
06/13/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/624,356	LUKAS ET AL.	
	Examiner	Art Unit	
	MARIANNE L. PADGETT	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13,15-29,32-35,37-42,45,53 and 73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11, 13, 15-29, 32-35, 37-42, 45, 53, 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. Applicants amendments have near the claims, so as to remove previous rejections over prior art with respect to the narrow limitations, and specially in view of applicant's arguments as presented in the remarks of 1/3/2008, however due to the allowance of two applications previously rejected under provisional obviousness double patenting, some rejections remain, thus requiring the below rejections.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-29, 32, 35, 37-45 & 53-73 are (provisionally) rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 55-71, 73-77 & 80-90 of copending Application No. 10/295,568 (allowed, but not yet issued, thus no longer really provisional, but PN not yet available), optionally in view of Rose et al. as discussed above.

Since the last action, 10/29 5,568 has been allowed, hence this rejection is no longer provisional, hence requires further response in order to remove it.

The claims in this application are also directed to CVD processing, thus the amendment make not necessitate significant changes with respect to this rejection.

Although the conflicting claims are not identical, they are not patentably distinct from each other because, while options are claimed in some different orders, and independent claims have varied emphases on energy source used with the broader photon source of (295,568) encompassing the UV of the present case, with the exception of the above discussed (section 5) limitation added in the 10/12/2006 amendment, all the same options are present in each set of claims, thus creating obvious variations, as discussed in sections 4 & 6 of the 5/19/2006 & 9/21/2005 rejections, respectively. The limitation of the amendment to present claims is considered inherent &/or obvious for reasons as discussed above

(This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented).

4. Claims 1-11, 13, 15-16, 25-29, 32- 35, 37-45 & 53-73 are **provisionally** rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 20-22, 24-27 and 30 of copending Application No. **10/842,503**, optionally in view of Rose et al. as discussed above.

These claims of the copending application, as exemplified by claim 30 therein also encompass the amended limitation of CVD process, however claimed in different orders, thus also do not necessitate changes in this rejection.

Although the conflicting claims are not identical, they are not patentably distinct from each other because while various limitations are claimed in different orders, and with varying degrees of emphasis, the process limitations of these claims overlap in their generics and specific requirements, such that they

are obvious variations on each other for reasons as discussed in section 9 in the 9/21/2005 action & in section 5 the action mailed 8/8/2007.

This is a **provisional** obviousness-type double patenting rejection because the conflicting claims have not in fact been patented

5. Claims 1-11, 13, 15- 29, 32- 35, 37-42, 45, 53 & 73 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-55 of copending patent No. **7,332,447** (11/228,223 ≡ 2006/0078676 A1), respectively, optionally in view of Rose et al.

Since the last action, 11/228,223, has been allowed hence this rejection is no longer provisional, hence requires further response in order to remove it.

Although the conflicting claims are not identical, they are not patentably distinct from each other because again, the various limitations in the two applications are claimed in different orders with different emphasizes and phraseology, but overlapping generic and specific requirements, creating obvious variations wherefore for 10/409,468 reasons as discussed in section 11 of the 9/21/2005 action & in section 5 above remain relevant. For SN 11/228,223 noted porogens claimed corresponding to the newly added porogen limiting limitations of claims 54-72 of the present case, which read on the more specific compounds previously claimed, specific matrix material as claimed designated in claimed three of the copending case & methods of posttreatment in claims 50-53 that are inclusive of photon energy having wavelengths in the UV & removal of all porogens, such that the reasoning applied to the (468) case also applies to (223). Also note that for (223), while all specific parameters are not discussed, reasons for obviousness of routine experimentation for optimization of such parameters have been previously discussed in the case & may be found below in section 11, and are equally obvious with respect to analogous processes & compensations claimed in this application.

6. Applicant's arguments filed 1/3/2008 & discussed above have been fully considered but they are not persuasive.

Applications rejected under provisional obviousness double patenting have been allowed since last action, hence need for the response in order to remove them & enable allowance.

An additional reference noted that the of interest is Moghadam et al. (7,256,139 B2), especially teachings on col. 30, lines 39-56+ & col. 40, lines 40-59, which indicate the presence of Si-OH terminal groups on films as deposited.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne L. Padgett whose telephone number is (571) 272-1425. The examiner can normally be reached on M-F from about 8:30 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks, can be reached at (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marianne L. Padgett/
Primary Examiner, Art Unit 1792

MLP/dictation software

6/9/2008